

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

PADCOM, INC.,

Plaintiff,

v.

NETMOTION WIRELESS, INC.,

Defendant.

C.A. No. 05-889-SLR

**DECLARATION OF KATHERINE KELLY LUTTON IN SUPPORT  
OF DEFENDANT NETMOTION WIRELESS, INC.'S MOTION TO  
DISMISS THE DECLARATORY JUDGMENT COMPLAINT  
OF PADCOM, INC. FOR LACK OF JURISDICTION  
PURSUANT TO FEDERAL RULES OF CIVIL  
PROCEDURE 12(b)1 AND 12(h)(3)**

I, Katherine Kelly Lutton, declare as follows:

1. I am a principal of Fish & Richardson P.C., counsel of record in this action for Defendant NetMotion Wireless, Inc. I am a member of the Bar of the State of California and of this Court. I have personal knowledge of the matters stated in this declaration and would testify truthfully to them if called upon to do so.

2. In a January 4, 2005 call with Mr. Michael Fink of Greenblum and Bernstein, counsel for Padcom, I asked Mr. Fink to clarify the bases for declaratory judgment jurisdiction. Mr. Fink responded by saying that "the complaint speaks for itself." He stated that if I did not understand the complaint, he should not have to explain it to me. He also stated that the only way he would dismiss the complaint was if NetMotion was willing to enter into a covenant not to sue.

3. NetMotion did not assert any of its patents in *Padcom Inc. v. NetMotion Wireless, et al.*, C.A. No. 03-983 (D. Del. 2003) ("*Padcom I*") or the related litigation.

4. Attached hereto as Exhibits A-O are true and correct copies of Padcom's December 27, 2005 press release, or portions thereof, as reported in the media.

5. Attached as Exhibit P is a true and correct copy of an IP Law Bulletin Article dated January 3, 2006.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed at Redwood City, California, this 6<sup>th</sup> day of January, 2006.

  

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Katherine Kelly Lutton

**CERTIFICATE OF SERVICE**

I hereby certify that on January 6, 2006, I electronically filed the  
**DECLARATION OF KATHERINE KELLY LUTTON IN SUPPORT OF  
DEFENDANT NETMOTION WIRELESS, INC.'S MOTION TO DISMISS THE  
DECLARATORY JUDGMENT COMPLAINT OF PADCOM, INC. FOR LACK  
OF JURISDICTION PURSUANT TO FEDERAL RULES OF CIVIL  
PROCEDURE 12(b)1 AND 12(h)(3)** with the Clerk of Court using CM/ECF which will  
send notification of such filing(s) to the following Delaware counsel. In addition the  
filing will also be sent via hand delivery:

Josy W. Ingersoll  
Adam W. Poff  
Young Conaway Stargatt & Taylor, LLP  
The Brandywine Building, 17th Floor  
1000 West Street  
P.O. Box 391  
Wilmington, DE 19899-0391

I hereby certify that on January 6, 2006, I have mailed by United States Postal  
Service, the document(s) to the following non-registered participants:

Jill M. Browning  
Greenblum & Bernstein, P.L.C.  
1950 Roland Clarke Place  
Reston, VA 20191-1411

/s/ William J. Marsden, Jr.

William J. Marsden, Jr.